



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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September 29, 2017

Dr. Art Dunning
President
Albany State University
504 College Drive
Albany, GA 31705

Re: Complaint #04-15-2072

Dear President Dunning:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of the above-referenced complaint, filed on December 16, 2014, against Albany State University (the University), in which the Complainant alleged that the University discriminated against her on the basis of disability by failing to provide her academic adjustments and auxiliary aids and services (with respect to the provision of double time on graded work).

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance (FFA); and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws.

OCR investigated the following legal issue:

Whether the University discriminated against the Complainant on the basis of disability, by failing to provide her academic adjustments and auxiliary aids and services (with respect to the provision of double time on graded work), in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.44, and the Title II implementing regulation at 28 C.F.R. § 35.130.

During the course of its investigation, OCR reviewed information provided by the Complainant and the University, including the University's disability-related reasonable accommodations procedures, notice of non-discrimination, disability discrimination grievance procedures; the Complainant's academic and medical records, and correspondence with the Complainant. OCR also conducted several witness interviews, including with three administrators and one professor.

Additionally, OCR interviewed the Complainant. OCR examined all evidence in this matter under the preponderance of the evidence standard, which requires the weight of the evidence to show that a particular fact or event was more likely than not to have occurred.

At the conclusion of the investigation, OCR found the University was in noncompliance with Section 504 and Title II, as alleged. OCR's determination of the facts and conclusions of law and summary of the evidence are set forth below. The enclosed, executed Resolution Agreement addresses this compliance concern.

Legal Standards

Section 504 at 34 C.F.R. § 104.44 (a) addresses academic adjustments. It provides, in relevant part, that: a recipient shall make such modifications to its academic requirements (hereinafter, accommodations) as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. Section 504 at 34 C.F.R. § 104.44 (b) provides that a recipient may not impose upon students with disabilities other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings that have the effect of limiting the participation of students with disabilities in the recipient's education program or activity. Section 504 at 34 C.F.R. § 104.44 (c) provides that in a recipient's course examinations or other procedures for evaluating students' academic achievement, a recipient shall provide such methods for evaluating the achievement of students who have a disability that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure). Section 504 at 34 C.F.R. § 104.44 (d) addresses auxiliary aids. It provides that a recipient shall take such steps as are necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature. Hereinafter in this document, "academic adjustments" and "auxiliary aids and services" will be referred to as "accommodations."

To determine whether a university is in compliance with Section 504's requirements regarding accommodations, OCR reviews a variety of factors. First, OCR reviews whether the complainant provided adequate notice that accommodations were required and demonstrated that the accommodations were necessary using the university's established process. (If not, then

OCR reviews whether any factor mitigated the complainant's failure in this regard and whether the university's procedures for obtaining accommodations evidence failure to comply with the obligations in Section 504.) Next, OCR considers whether appropriate accommodations were provided. If not, OCR then (a) reviews whether the complainant and the university engaged in an interactive process to identify the needed documentation and determine the appropriate accommodations, if any; and (b) examines the university's reasons for not providing accommodations. Finally, if the university disputes the complainant's need for a requested accommodation, OCR looks at whether the university took reasonable steps to obtain a professional determination of whether accommodations were necessary and, if so, what accommodations were necessary. The Title II implementing regulation at 28 C.F.R. § 35.130 is interpreted consistently with Section 504 with respect to the allegation in this complaint.

Background

The Complainant was enrolled at the University in the fall Semester of 2014 and the spring Semester of 2015. For the fall 2014 semester, classes began on August 18, 2014, and concluded with exams on December 10, 2014. The Complainant took one full-semester online class, and two, consecutive half-semester online classes in the fall. Classes for the spring Semester of 2015 began on January 7, 2015. Three administrators (Administrator 1, Administrator 2, and Administrator 3) processed the Complainant's academic adjustments (accommodations) request.

Factual Findings

Adequacy of notice and use of established procedures

- The University's procedures for requesting disability-related reasonable accommodations (accommodations procedures) require students seeking accommodations to provide appropriate verification of their disabilities; the procedures also specify that verification documents must be current, which is defined as between 3 and 5 years old. Also, the documentation must include a comprehensive assessment, a student's diagnosis, a student's treatment, and recommended accommodations.
- The Complainant believed she provided notice that she required accommodations for ADHD, Anxiety, and Depression on August 21, 2014, when she (a) provided the University's Department of Counseling and Complainant Disability Services (CSDS) office medical documentation from 2000 that referenced, among other things, Anxiety and Depression. The Complainant also checked "ADD" and "ADHD" on the University's "Voluntary Disclosure of Disability Form" (Disclosure Form).
- Administrator 1 informed the Complainant that her documentation was outdated on August 21, 2014.
- The Complainant asked what the rest of the process entailed.
- Thereafter, Administrator 1 told the Complainant that the rest of the process consisted of the Complainant signing the "Authorization for Release of Information" form (Release Form) giving CSDS permission to request (a) updated medical documents and other information from the Complainant's healthcare provider and (b) a copy of the Complainant's prior accommodations granted by the Complainant's former school; and the Complainant immediately signed the Release Form.

Appropriateness of granted accommodations

- (Timeliness of Accommodation)
 - (Fall 2014 Temporary Accommodation)
 - Administrator 2 said that when students present with outdated verification documents, the University provides temporary accommodations within 48 hours.
 - However, the Complainant did not receive her fall 2014 temporary accommodation of 30 additional minutes on tests and class assignments (30 minutes) until mid-September 2014, about 3 ½ weeks after the Complainant submitted her outdated medical documentation to CSDS.
 - (Fall 2014 Permanent Accommodation)
 - On August 21, 2014, the University faxed an accommodations-related request to the Complainant's former school, which responded on August 26, 2014, with correspondence stating that the school did not have current records or an evaluation for the Complainant but had granted her, among other things, (an unspecified amount of) extended time on tests.
 - On September 9, 2014, the University faxed a request for "the most recent documentation of patient for accommodations/modifications for classes" to the Complainant's healthcare provider in response to her calling and complaining about not having an accommodation.
 - The University's accommodations procedures require the verification documentation to include the evaluating professional's recommended accommodations, but the University's September 9, 2014, fax, which it sent 19 days after the Complainant signed the Release Form, did not include any specific request for recommendations.
 - On September 18, 2014, the Complainant's medical provider responded with diagnostic information (from June 2014, confirming ADHD, "predominately inattentive type," Depression, and Anxiety); the response did not include the healthcare provider's recommended accommodations, which were required but not requested by the University.
 - Subsequently, the Complainant complained about not having a permanent accommodation only to allegedly learn from the University that it had not requested that the healthcare provider recommend accommodations. The Complainant contacted the healthcare provider, who responded on October 29, 2014, recommending (an unspecified amount of) extra time for testing and class assignments.
 - The University claimed not to have received the healthcare provider's recommended accommodations until mid-November, almost two weeks after the recommendations were sent, due to notoriously slow mail delivery, and

the University did not request that the healthcare provider use a more expedient delivery method.

- The University claimed to have received the former school's response on September 9 or 12, 2014, due to slow mail delivery but did not request that the school use a more expedient delivery method.
 - After receiving the aforementioned documentation from the Complainant's healthcare provider and former school, the University made the Complainant's temporary accommodation her fall 2014 permanent accommodation in mid-November 2014, just a few weeks before the December 10, 2014, conclusion of the full semester.
- (Spring 2015 Initial Accommodation)
 - The spring 2015 semester began January 7, 2014, but the Complainant's spring semester 30 minute accommodation was granted in mid-January 2015.
- (Utility of Accommodation)
 - The Complainant and Administrators 1, 2, and 3 unanimously agreed that the 30 minute accommodation has limited utility and relevance in certain class contexts. An additional 30 minutes may be useful in the context of a "face to face" class where all students are given 30 minutes to complete a class assignment, but it is too small an amount of time to be meaningful in the context of online or "face to face" class, where all students are given five whole days (120 hours) to complete a class assignment or test. Also, it is inconsistent to apply an additional 30 minutes to complete a five minute quiz and a 50 minute exam.
 - At the University, Administrator 3 said she has advocated for the need to work on way to determine appropriate accommodations in the context of online classes; she has also advocated against the use of a blanket 30 minute accommodation, particularly in the context of online classes.
- (Instructor's Provision of Accommodation)
 - The Complainant alleged that one of her professors (Professor) refused to provide her accommodation in a half semester class occurring during the second half of the fall 2014 semester; however, she was unable to identify any specific graded work that she did not receive the accommodation for.
 - The Professor denied that she failed to provide the accommodation.
 - In response to the her complaint about the Professor, Administrator 3, in spite of being unable to substantiate the Complainant's allegation, said that the Complainant could redo any work she did not feel she received her accommodation for.
 - The Complainant declined this offer and withdrew from the class.

Interactive process and reasons for accommodations determination

- (Interactions regarding Documentation and the Accommodation Determination)
 - Only one of three administrators processing the Complainant's accommodations request claimed to have asked the Complainant what accommodation she was seeking, but that administrator could not state how much time the Complainant had requested in the fall semester of 2014.
 - Only one of three administrators asked the Complainant what her functional challenges were in an academic setting.
 - At no point did any administrator ask the Complainant what strategies she may have employed previously to mitigate the impact of her disabilities in an academic setting.
 - While the administrators asserted that the Complainant did not ask for an accommodation of more than 30 minutes until January, 2015, none were able to say how much more time the Complainant was asking for at that time.
 - Although the Complainant's healthcare provider's recommendation for an unspecified amount of additional time on tests and class assignments included a request that the University contact the healthcare provider for any questions, the University did not contact the healthcare provider for more specificity.
 - The University did not initiate communication with the Complainant to inform her that it had not obtained any (or appropriate) medical documentation; the Complainant would only learn this type of information when she would complain about not receiving services.

- (Reasons for providing 30 minutes instead of the accommodation of double time on all graded work)
 - The Complainant claimed she asked for double time on all graded work starting in August 2014 and throughout the year.
 - The University indicated that part of the reason it did not provide the Complainant double time on all graded work was that the Complainant did not ask for it.
 - Although the University claimed that the temporary accommodation was based on the Complainant's outdated documentation, it was unable to explain what specific information in the Complainant's outdated documentation, if any, supported its decision to grant the Complainant the 30 minute accommodation.
 - Similarly, the University was unable to explain what specific information in the Complainant's current documentation, if any, supported its decision to grant the Complainant a 30 minute permanent accommodation.
 - The University's reliance on a blanket extra 30 minute accommodation for ADHD, is allegedly a "best practice," that the University attributed to the "internet" and the Regents' Center for Learning Disorders (RCLD)¹ at Georgia

¹ Georgia Southern University's RCLD is one of three centers across the state of Georgia established by the University System of Georgia (USG) Board of Regents to provide assessment, training, research, and resources related to complainants who have Learning Disorders that impact their functioning in the postsecondary academic environment. Learning Disorders commonly assessed by RCLD include, Attention Deficit/Hyperactivity Disorder, Autism Spectrum Disorders, Learning Disabilities, Psychological Disorders, and Traumatic Brain Injury. RCLD also has primary responsibility for policy development and the administration of a clearly-defined disability

Southern University. Among other things, RCLD reviews documentation, as submitted by referring institutions in support of students' requests for accommodations, and makes recommendations regarding appropriate accommodations and services.

- RCLD, however, denied that (a) the University contacted RCLD about the Complainant in the fall semester of 2014 or (b) it would make an informal accommodation recommendation over the phone.

Steps taken to obtain a professional determination

(Steps taken)

- To resolve its dispute regarding the Complainant's need for more than the 30 minutes, the University advised the Complainant that it was sending her medical documentation to RCLD in January 2015.
- RCLD requires very specific information in complainants' documentation of disabilities.² Although some of that information was missing in the Complainant's documentation, none of the administrators informed the Complainant of any deficiencies in her documentation before the University sent it to RCLD.
- The administrators inaccurately reported to the Complainant that RCLD's decision would be binding. However, according to RCLD, except in a few circumstances not presented by the Complainant's case,³ RCLD functions in a consultative role, reviewing evaluative documentation completed by outside providers and submitted by universities soliciting RCLD's input. RCLD does not make accommodations determinations, but, instead, makes accommodations recommendations, such as granting a complainant extra time. RCLD's recommendations never include specific amounts of time. Instead, the specific amount of extra time must be a negotiation between the university and student; as the university (and not RCLD) has more intimate knowledge of the student, the

eligibility criterion at USG institutions, allowing otherwise qualified complainants with Learning Disorders to access appropriate academic accommodations and services.

² For example, for if a complainant has a psychological disorder such as Anxiety or Depression which interferes with that complainant's cognitive functioning, thereby, negatively impacting that complainant's ability to function in an academic environment, RCLD expects the documentation to include a description of current functional limitations impacting academic performance resulting from the disorder. For ADHD, RCLD looks for evidence, beyond simple self-report, of clinically significant inattention and/or hyperactivity-impulsivity symptoms prior to the age of 12; RCLD also generally looks for evidence of impact as demonstrated by appropriate standardized rating scales or norm-referenced measures of cognitive/executive functioning that provide comparisons to similarly aged individuals.

³ Accommodations, which require RCLD approval, include course substitutions for required high school curriculum, the Regents' Test, Collegiate Placement Exam or COMPASS modifications beyond those that can be granted by the institution, and additional semesters in Learning Support beyond those that can be granted by the institution and situations in which RCLD actually assesses the student, as opposed to reviewing another professional's assessment of a student.

- student's courses, and baseline details like how long professors are giving all students to complete each quiz, test, paper, or other assignment.
- The administrators met with the Complainant on January 27, 2015, and inaccurately represented that RCLD had denied her request for more than 30 minutes; however, RCLD's "finding" was that a detailed assessment of cognitive processing and academic achievement would be needed to determine appropriate use of additional academic accommodations.
 - None of the administrators informed the Complainant that RCLD's "finding" was not that her functional impairment did not merit additional time – above 30 minutes, but, rather, that her documentation was insufficient for an adequate review.

Compliance of the University's accommodations procedures

- The University's reasonable accommodations procedures:
 - Require students seeking accommodations to:
 - print hard copies of their detailed course schedules and submit them to CSDS (rather than send an electronic copy via email),
 - physically deliver their accommodations letters to their professors, obtain their professors' signatures on Delivery Verification forms, and
 - physically return the signed Delivery Verification forms to CSDS.
 - Require the verification documentation that is submitted in support of an accommodations request to include a student's treatment.
 - State that RCLD will make accommodations determinations when a student's verification documentation is unclear or relates to a learning disability, when RCLD does not make these determinations.
 - Restrict the provision of disability-related reasonable accommodations only to those courses that count towards a student's certification, diploma, or degree.
 - Do not indicate that the process of determining appropriate accommodations will be an interactive one between the University and the student; and there are no forms or other documents in which the University solicits from the student what accommodations s/he is seeking, what the student's functional limitations are in an academic setting, or what previous strategies the student may have employed to mitigate these limitations.
 - Are contained in hardcopies of four documents ("Student Disability Services" brochure, "Disability Services," "Disability Services Disclosure," and "Rights and Responsibilities,") all of which the University provided in response to OCR's data request. The University stated that all these documents are available in CSDS and online. Except for "Rights and Responsibilities," none of these documents are on the University's website; the version of "Rights and Responsibilities" on the website, however, does not actually contain the procedures. Described by one administrator as "buried deep" on the University's website, the accommodations procedures were not otherwise found by various OCR search queries (of words like disability, accommodation(s), disability accommodations, academic adjustment(s), auxiliary aids, disability services) and

are not available under any of the four links that appear under the website's Student Disability Services link.

Analysis and Conclusion

Adequacy of notice and use of established procedures

In assessing the adequacy of a university's compliance with the Section 504 implementing regulation at 34 C.F.R. Section 104.44, OCR first looks at whether a complainant provided adequate notice that accommodations were required and demonstrated that they were necessary using the university's established procedures. If not, OCR next looks at whether there were any factors mitigating the complainant's failure in this regard. OCR may consider, for example, whether the complainant was provided misinformation about the procedures by a university's staff member.

In the current matter, the evidence shows that the Complainant provided notice that an accommodation was required for ADHD, Anxiety, and Depression on August 21, 2014, when she went to CSDS requesting an accommodation, provided CSDS medical documentation (from 2000) referencing Anxiety and Depression, and checked ADHD on the Disclosure Form. Thereafter, the University assumed the responsibility for completing the Complainant's accommodations request by telling her that all she needed to do was sign the release form giving them permission to request updated medical documents and other information from the Complainant's healthcare provider and a copy of the Complainant's prior accommodations granted by the Complainant's former school.⁴

Appropriateness of granted accommodations

After examining a complainant's notice and use of the university's procedures, OCR next considers whether a university provided the complainant an appropriate accommodation. Depending on the complainant's factual assertions, this consideration may include a review of the timeliness and effectiveness of an approved accommodation as well as a review of whether a professor or other staff member refused to provide an approved accommodation.

In the current matter, the University failed to provide the Complainant an appropriate accommodation because the 30 minute accommodation it did provide was not timely granted and was of limited utility. However, the evidence is insufficient to establish that the Professor refused to provide the approved accommodation, as alleged by the Complainant. Regarding timeliness, the University did not follow its procedure of granting temporary accommodations within 48 hours; instead, it waited 3 ½ weeks to provide her temporary fall 2014 accommodation of 30 minutes. Also, the University did not provide the Complainant her permanent fall accommodation of 30 minutes until mid-November 2014. The delays in process were attributable to the University's oversights in matters such as (a) timely requesting all of the

⁴ This conclusion is based on the particular facts of this case and should not be misconstrued to convey that a post-secondary institution necessarily assumes such responsibility by requesting a complainant's signature on a release of information form.

documentation it required from the Complainant's healthcare provider, (b) notifying the Complainant about documentation deficiencies, and (c) in light of (allegedly) slow mail, requesting more expedient information relay methods from responders. The delays continued in the spring semester, which began on January 7, 2015, when the University waited until mid-month to issue the Complainant's initial accommodation. Regarding utility, the University acknowledged that the Complainant's 30 minute accommodation had limited utility and consistency in the context of various types of classes and graded work. Finally, regarding the Professor, the Complainant was unable to identify the specific graded work for which the Professor allegedly failed to provide the accommodation; the Professor denied that she failed to provide the accommodation; and the Complainant declined the University's offer, made without sufficient evidence to establish wrongdoing by the Professor, to allow the Complainant to redo any work she felt she was not accommodated for in that class.

Interactive process and reasons for accommodations determination

When the evidence shows that an appropriate accommodation was not provided, OCR next examines (a) whether the complainant and the university engaged in an interactive process to identify the needed documentation and determine what accommodation, if any, should be granted and (b) in the case where an inappropriate accommodation was provided, the University's reasons for that accommodation.

In the current matter, the University failed to engage in a sufficiently interactive process with the Complainant to determine whether and, if so, what accommodation(s) might be appropriate, and the University's reasons for its accommodation determination lack a sound basis in fact. Regarding the University's failure to interact, the University had no evidence that it asked the Complainant or her healthcare provider how much additional time the Complainant was seeking/needed as an accommodation or what strategies she may have employed previously to mitigate the impact of her disabilities. Only one of three administrators talked with the Complainant about any of her functional limitations; no inquiry was made to her healthcare provider regarding this. The University also failed to (a) solicit more specificity from the Complainant's healthcare provider regarding the provider's recommendation for additional time, and (b) initiate communication with the Complainant about documentation deficiencies. The University's position was that part of the reason the Complainant did not receive double time on all graded work, as she alleged she requested, was that she did not request more than 30 minutes until January 2015. Merely stating, as the University did, that granting 30 minutes is a "best practice, without being able to identify a clear and reliable source of that practice or explaining what specific information, if any, about the Complainant's documentation, it relied on to grant the Complainant an additional 30 minutes as a temporary accommodation and, later, permanent accommodation, does not create a sufficient basis for an accommodations determination. Moreover, RCLD's denial that it advised the University about the Complainant's fall 2014 accommodation shows that the University's claim that it relied on RCLD in the fall had no basis in fact.

Steps taken to obtain a professional determination

If a university disputes a complainant's need for a requested accommodation, OCR examines

whether the university took reasonable steps to obtain a professional determination as to whether and, if so, what accommodation was necessary.

In the current matter, the University failed to take reasonable steps to obtain a professional determination regarding the Complainant's accommodation. Although it submitted the Complainant's documentation to RCLD in January 2015, to address its dispute with the Complainant regarding her request for more than 30 minutes, the University failed to inform the Complainant of deficiencies in her documentation both before sending the documentation to RCLD and after it received RCLD's response regarding the deficiencies. Additionally, the University inaccurately represented to the Complainant that RCLD's recommendations are binding and omitted to share that RCLD does not make recommendations regarding specific amounts of time. Finally, the University inaccurately represented to the Complainant that RCLD found that she was not eligible for more time when, in fact, RCLD only found that her documentation was deficient.

Compliance of the University's reasonable accommodations procedures

Where appropriate based on the evidence, OCR may examine whether a university's procedures for obtaining accommodations evidence any failure to comply with its Section 504 obligations. Such failures may include, for example, provisions that impose or suggest a limitation on the types of available accommodations, or the specific disabilities which may be accommodated; improper definitions of disability; language permitting faculty members to refuse to provide accommodations approved by the disability services office, etc.

In the current matter, concerns related to the University's reasonable accommodations procedures are catalogued in the Factual Findings section of this document.

Conclusion regarding Complaint Allegation

Based on the preponderance of the evidence, OCR determines that the University failed to comply with the Section 504 implementing regulation at 34 C.F.R. § 104.44, and the Title II implementing regulation at 28 C.F.R. § 35.130. Therefore, OCR concludes that there is sufficient evidence to substantiate the Complainant's allegation that the University discriminated against her in its provision of accommodations.

Un-alleged Violations: Notice of Non-Discrimination and Disability Discrimination Grievance Procedure

OCR routinely reviews a university's notice of non-discrimination (notice) and disability discrimination grievance procedure when that University is subject to a complaint investigation.

The University's notice is located at the following web address:

<https://www.asurams.edu/albany-state-university/administration/title-ix/notice-non-discrimination/>

Although the notice correctly prohibits discrimination on the bases of race, color, national origin, sex, disability status, and age, it only addresses inquiries based on sex and refers individuals with such inquiries to (a) the individual on campus designated to handle such inquiries (who is further identified by name, title, and contact information) and (b) OCR. The notice does not identify the individual(s) (by name or title and contact information) responsible for the University's compliance with the laws that prohibit discrimination on the other aforementioned bases, to whom inquiries should be directed.

In response to OCR's request for a copy of its grievance procedures for complaints of disability discrimination, the University provided a copy of its "ADA Policies and Procedures Student Disability Services Grievance Procedures" (grievance procedure) which is located at the following web address:

<https://www.asurams.edu/student-life-activities/counseling-disability-services/ada-policies-procedures/>

The information, presented below, is a list of general elements OCR uses in evaluating the adequacy of a recipient's disability grievance procedure; after each element, there is a general description of information regarding the grievance procedures compliance (or lack thereof) with the element:

1. Notice to students and employees of the grievance procedure, including where complaints may be filed:

The grievance procedure does not explicitly state that it applies to employees, however, one can reasonably infer that it applies to employees because it states that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in programs, activities, or employment practices." It also identifies, by title and address, the individual to whom complaints should be directed.

2. Application of the grievance procedure to complaints filed by students or on their behalf alleging discrimination or harassment carried out by employees, other student, or third parties:

The grievance procedure does not state explicitly that it applies to complaints filed on behalf of students or that it encompasses disability-based harassment. Also, it does not state that complaints can be filed about conduct carried out by employees, other students, and third parties.

3. Provision for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence:

The grievance procedure does not explicitly state that it provides for an adequate, reliable, and impartial investigation of complaints, but it does state that a complainant is entitled to a prompt and equitable resolution. Questions arise regarding the adequacy of

investigations, however, by the grievance procedure's provision that creates discretion to limit, without any specified criteria, when an investigation will follow the filing of a complaint. The grievance procedure states that "an investigation, as may be appropriate, shall follow the filing of a complaint." This is further complicated by the grievance procedure's provision that "upon the filing of any complaint, a copy of such complaint shall be furnished to the person(s) named therein who allegedly committed a discriminatory practice." The grievance procedure contains no provision to withhold a copy of the complaint from the accused when the University declines to pursue an investigation. It also contains no privacy-related provision to limit the information shared about the complaint with the accused; in an instance where multiple students have been accused of disability harassment in the same complaint, for example, there is no provision, in furnishing copies of the complaint to the accused, to withhold the names of the accused students from each other. Regarding impartiality, the grievance procedure falls short of ensuring an unbiased investigation by not providing the title and contact information of an alternate reviewer in the event that the only individual designated by the policy to review complaints is the accused. Also, it improperly designates the same individual to whom complaints are addressed to review requests for reconsideration.

4. Designated and reasonably prompt time frames for the major stages of the complaint process:

The grievance procedure permits complainants 180 days from the discriminatory act to file a complaint and gives the University 30 days to provide a written response. It does not, however, designate any timeframes for a complainant to file or the University to respond to a request for reconsideration.

5. Written notice to the complainant and alleged perpetrator of the outcome of the complaint:

The grievance procedure provides for written notice to be given to the complainant and alleged perpetrator.

6. An assurance that the university will take steps to prevent recurrence of any disability-based discrimination or harassment and remedy the discriminatory effects on the complainant and others, if appropriate:

The grievance procedure does not include an assurance that the university will take steps to prevent recurrence of any disability-based discrimination or harassment (such as prohibiting retaliation against the complainant) and remedy the discriminatory effects on the complainant and others, if appropriate.

In conclusion, OCR found by a preponderance of the evidence that the University violated the Section 504's implementing regulation at 34 C.F.R. § 104.44, and Title II's implementing regulation at 28 C.F.R. § 35.130, as alleged. Although not alleged, OCR also found procedural

violations with respect to the University's notice of non-discrimination and disability discrimination grievance procedure.

The Resolution Agreement signed by the University addresses the issues on which OCR found violations by requiring the University to revise, publish, and provide training to appropriate faculty and staff regarding its reasonable accommodations procedure, notice of non-discrimination, and disability discrimination grievance procedure. The Resolution Agreement also requires the University to extend an offer to the Complainant to participate in an interactive process to determine appropriate accommodations for any future classes the Complainant may elect to take at the University and to refund the Complainant the cost of tuition paid for the class she withdrew from in the fall semester of 2014.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment. This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

OCR is committed to a high quality resolution of every case. If you have any questions regarding this matter, please contact Ms. Demetria Mills-Obadic, at (404) 974-9353, or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright, Esq.
Supervisory General Attorney

| Enclosure: Resolution Agreement